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DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration** 

**50 CFR Part 660** 

[Docket No. 180207141-8999-03]

RIN 0648-BH74

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast

Groundfish Fishery; Groundfish Bottom Trawl and Midwater Trawl Gear in the Trawl

Rationalization Program; Correction

**AGENCY**: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric

Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** NMFS published a final rule on December 3, 2018, to implement management

measures revising Federal regulations that currently restrict the use and configuration of bottom

and midwater trawl gear for vessels fishing under the Pacific Coast Groundfish Fishery's Trawl

Rationalization Program. This notification corrects language describing where vessels are

prohibited from carrying any other type of small footrope trawl gear other than selective flatfish

trawl gear (SFFT); restores language which clarifies the trawl gear types vessels are allowed to

carry simultaneously on a trip; restores the prohibition on the use of small footrope trawl inside

the Columbia and Klamath River Salmon Conservation Zones; and restores vessel declarations

for non-trawl and open access groundfish trips, open access trips for other fisheries, and other

trip types.

**DATES:** This correction notice is effective on January 1, 2019.

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**FOR FURTHER INFORMATION CONTACT:** Colin Sayre, NMFS West Coast Regional Office, telephone: 206-526-4656, email: colin.sayre@noaa.gov

**SUPPLEMENTARY INFORMATION:** NMFS published a final rule (December 3, 2018; 83 FR 62269) that, in part, allowed vessels to use multiple types of trawl gear on the same trip without returning to port. The final rule provided a description of trawl gear types allowed on board simultaneously on a single trip, described areas where vessels are permitted to use multiple gear types, and described declaration and reporting requirements for vessels participating in the Trawl Rationalization Program.

The final rule requires that vessel operators submit a new declaration to NMFS Office of Law Enforcement before changing gear type. The preamble to the rule described the gear types a vessel may carry and use on the same trip. The final rule allows vessels in the Shorebased IFQ Program to carry on board multiple types of groundfish bottom or midwater trawl gear in all areas except in the area between 42° North (N.) latitude and 40°10' N. latitude and shoreward of the trawl Rockfish Conservation Area (RCA). In this area, a vessel is only allowed to have midwater trawl gear, large footrope trawl gear, and selective flatfish trawl (SFFT) gear on board simultaneously. The final rule prohibited vessels from having any other type of small footrope trawl gear on board when fishing in this area. The final rule also requires fishing with small footrope trawl gear, other than SFFT, inside the Columbia and Klamath River Salmon Conservation Zones. The final rule is effective January 1, 2019.

#### **Need for Correction**

Two of the corrections are needed so that the implementing regulations are accurate and implement the action as intended by the Pacific Fishery Management Council (Council) and

described in the preamble of the final rule. The other two corrections are needed to restore text that was unintentionally removed through the final rule.

The implementing regulations adjusted the sector and gear declarations at § 660.13(d)(4)(iv)(A)(I) through (8), but inadvertently deleted required declaration types for sectors, gears, and fisheries other than limited entry trawl groundfish gear currently described at § 660.13(d)(5)(iv)(A)(9) through (26). This correction would include the entire list of required gear and sector declarations for non-trawl and open access groundfish trips, open access trips for other fisheries, and other trip types.

At § 660.130(c)(2)(iii) language describing use of small footrope gear inside the Klamath River Salmon Conservation Zone inadvertently substituted the word "prohibit" for "require" when describing the use of SFFT, a type of small footrope trawl gear, in the area. The final rule for a separate action, the 2019-2020 Pacific Coast Groundfish Biennial Harvest Specifications (December 12, 2018; 83 FR 63970), closes the Columbia and Klamath River Salmon Conservation Zones to all midwater trawling and to bottom trawling, unless vessels are using SFFT. Vessels are currently prohibited from fishing with midwater trawl gear in both areas. The specifications final action maintains the prohibition on bottom trawling in these areas without SFFT, which was included under the blanket requirement that groundfish trawl vessels use SFFT gear shoreward of the trawl RCA north of 40°10′ N lat. The Columbia and Klamath River Salmon Conservation Zones are located inside this area. NMFS removed this blanket requirement in the December 8, 2018, final rule (83 FR 62269) tied to this correction notice. The final rule for specifications reestablished the SFFT requirement inside the Columbia and Klamath River Salmon Conservation Zones. The SFFT requirement is necessary to limit impacts to Endangered Species Act salmon and green sturgeon in these areas. Requiring the use of small

footrope trawl gear, other than SFFT, in these area would remove this protective prohibition.

Language describing the use of small footrope trawl gear, inside the Columbia and Klamath
River Salmon Conservation Zones would be corrected to state that small footrope trawl gears
other than SFFT are "prohibited," consistent with the Council's intent for regulations in this area.

The Council discussed maintaining the SFFT requirement in these areas its March 2018, April
2018, and June 2018 meetings. The public also had the opportunity to comment on maintaining
this requirement during the comment period for the proposed rule for 2019-2020 Pacific Coast
Groundfish Biennial Harvest Specifications (September 19, 2018; 83 FR 47416). Changing this
requirement undermine the purposes of this rule, and would be inconsistent with our legal
requirements under the Endangered Species Act.

The implementing regulations revising § 660.130(c)(4)(i)(A) did not specify the location, namely the area between 42° N. latitude and 40°10' N. latitude and shoreward of the trawl RCA, where vessels may only carry one type of small footrope trawl gear, SFFT gear, along with midwater trawl and large footrope trawl gear. Instead, the implementing regulations omitted language specifying the location where vessels are subject to this restriction, and maintained the prohibition currently in regulation that prohibits a vessel from carrying more than one type of small footrope trawl gear north of 40°10' N. latitude. As described in the preamble to the December 3, 2018, final rule, this prohibition for the area between 42° N. latitude and 40°10' N. latitude and shoreward of the trawl RCA is necessary to enforce the requirement to only use SFFT gear in this area. The implementing regulations will allow vessels fishing outside of the area between 42° N. latitude and 40°10' N. latitude and shoreward of the trawl RCA area to carry and use any type of small footrope trawl gear. Therefore, maintaining the current prohibition on carrying SFFT gear outside of the area between 42° N. latitude and 40°10' N.

latitude is unnecessarily restrictive. The correction to § 660.130(c)(4)(ii)(A) will include clarifying language concerning the types of gears (SFFT, midwater trawl, and large footrope trawl gear) allowed to be fished and carried in this area.

#### Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds there is good cause to waive prior notice and an opportunity for public comment on this correction, as notice and comment would be unnecessary and contrary to public interest. Notice and comment are unnecessary and contrary to the public interest because this notice corrects inadvertent errors in regulations made in the final rule published on December 3, 2018, and immediate notice of the error and correction is necessary to prevent confusion among participants in the fishery that could result in issues with reporting, recordkeeping, and enforcement. To effectively correct the errors, the changes in this notice must go into effect by January 1, 2019, as the final rule that contains the errors will become effective on that date. Thus, there is not sufficient time for notice and comment due to the imminent effective date of the final rule. In addition, notice and comment is unnecessary because this notice makes only minor changes to correct the final rule. The public, states and Pacific Fishery Management Council are aware of the correct intent of the regulations through the public process used to develop the final rule and had the opportunity to comment on these requirements during the comment period on the proposed rule for this action (September 7, 2018; 83 FR 45396). The preamble to the December 3, 2018, final rule also correctly describes the intent of the regulations. These corrections will not affect the results of analyses conducted to support management decisions in the Pacific Coast Groundfish fishery nor change the total catch in the fishery. No change in operating practices in the fishery is required.

For the same reasons stated above, the AA has determined that good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d). This notice makes only minor corrections to the final rule which will be effective January 1, 2018. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

This final rule is not significant under Executive Order 12866.

#### **Corrections**

Effective January 1, 2019, in FR Doc. 2018-26194 at 83 FR 62269 in the issue of December 3, 2018:

1. On page 62275, in amendatory instruction 3, in the third column, paragraphs (d)(4)(iv) introductory text and (d)(4)(iv)(A) are corrected to read as follows:

## § 660.13 [Corrected]

- (d) \* \* \*
- (4) \* \* \*
- (iv) Declaration reports will include: The vessel name and/or identification number, the gear type, and the fishery (as defined in paragraph (d)(4)(iv)(A) of this section). Vessels using limited entry trawl gear may only declare one gear type at a time. Vessels using fixed gear (limited entry and open access) outside the Shorebased IFQ Program may declare more than one type of non-trawl gear at the same time. Vessels

using trawl gear may only declare one trawl gear at a time and may not declare fixed gear on the same trip in which trawl gear is declared.

- (A) One of the following gear types or sectors must be declared:
- (1) Limited entry fixed gear, not including Shorebased IFQ Program,
- (2) Limited entry groundfish non-trawl, Shorebased IFQ Program,
- (3) Limited entry midwater trawl, non-whiting Shorebased IFQ Program,
- (4) Limited entry midwater trawl, Pacific whiting Shorebased IFQ Program,
- (5) Limited entry midwater trawl, Pacific whiting catcher/processor sector,
- (6) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership),
- (7) Limited entry bottom trawl, Shorebased IFQ Program, not including demersal trawl,
  - (8) Limited entry demersal trawl, Shorebased IFQ Program,
  - (9) Non-groundfish trawl gear for pink shrimp,
  - (10) Non-groundfish trawl gear for ridgeback prawn,
  - (11) Non-groundfish trawl gear for California halibut,
  - (12) Non-groundfish trawl gear for sea cucumber,
  - (13) Open access longline gear for groundfish,
  - (14) Open access Pacific halibut longline gear,
  - (15) Open access groundfish trap or pot gear,
  - (16) Open access Dungeness crab trap or pot gear,
  - (17) Open access prawn trap or pot gear,
  - (18) Open access sheephead trap or pot gear,

- (19) Open access line gear for groundfish,
- (20) Open access HMS line gear,
- (21) Open access salmon troll gear,
- (22) Open access California Halibut line gear,
- (23) Open access Coastal Pelagic Species net gear,
- (24) Other, or
- (25) Tribal trawl.
- (26) Open access California gillnet complex gear.

\* \* \* \* \*

2. On page 62277, in amendatory instruction 8, in the second column, paragraph (c)(2)(iii) is corrected to read as follows:

## § 660.130 [Corrected]

- (c) \* \* \*
- (2) \* \* \*
- (iii) The use of small footrope trawl, other than selective flatfish trawl gear, is prohibited inside the Klamath River Salmon Conservation Zone (defined at § 660.131(c)(1)) and the Columbia River Salmon Conservation Zone (defined at § 660.131(c)(2)).

\* \* \* \* \*

3. On page 62277, in amendatory instruction 8, in the second column, paragraph (c)(4)(i)(A) is corrected to read as follows:

# § 660.130 [Corrected]

- (c) \* \* \*
- (4) \* \* \*
- (i) \* \* \*
- (A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear on board simultaneously. A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a cumulative limit period. A vessel may have more than one type of limited entry bottom trawl gear on board (large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period except between 42° N. latitude and 40°10' N. latitude and shoreward of the trawl RCA. Between 42° N. latitude and 40°10' N. latitude and shoreward of the trawl RCA, vessels are prohibited from having any type of small footrope trawl gear other than selective flatfish trawl gear on board when fishing.

\* \* \* \* \*

4. On page 62277, in amendatory instruction 8, in the third column, paragraph (c)(4)(ii)(A) is corrected to read as follows:

## § 660.130 [Corrected]

- (c) \* \* \*
- (4) \* \* \*
- (ii) \* \* \*
- (A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may have more than one type of midwater groundfish trawl gear on board, either simultaneously or successively, during a

cumulative limit period. A vessel may have more than one type of limited entry bottom trawl gear on board (large or small footrope, including selective flatfish trawl), either simultaneously or successively, during a cumulative limit period.

\* \* \* \* \*

Authority: 16 U.S.C. 1801 et seq.

Dated: December 19, 2018.

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Donna S. Wieting,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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